

AUG 25 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

PABLO ROMERO, aka Pablo Gilberto
Romero-Flores, Sonny,

Defendant - Appellant.

No. 05-10351

D.C. No. CR-00-00186-WJR

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Hawaii
William J. Rea, District Judge, Presiding

Submitted August 21, 2006 ^{**}

Before: GOODWIN, REINHARDT, and BEA, Circuit Judges.

Pablo Romero appeals from the district court's judgment imposing a
98-month sentence after resentencing pursuant to *United States v. Booker*, 543

^{*} This disposition is not appropriate for publication and may not be
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

U.S. 220 (2005). We have jurisdiction under 28 U.S.C. § 1291, and we vacate and remand.

Romero contends, and the government concedes, that the district court erred by denying him the right to allocution at sentencing, and that because the district court had discretion to impose a lower sentence, the error was not harmless. We agree. *See United States v. Gunning*, 401 F.3d 1145, 1149 (9th Cir. 2005) (vacating sentence and remanding for resentencing where the district court failed to afford the defendant the right to allocution and had the discretion to impose a shorter sentence). Accordingly, we vacate the sentence and remand for resentencing.¹

VACATED and REMANDED.

¹ In light of our disposition, we do not reach the additional contentions raised in Romero's opening brief.